

Meeting of 2002-8-27 REGULAR MEETING

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING  
AUGUST 27, 2002 - 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Cecil E. Powell,                      Also Present:  
Presiding                      Bill Baker, City Manager  
   John Vincent, City Attorney  
   Brenda Smith, City Clerk  
   Melody Cudd, Deputy City Clerk

The meeting was called to order at 6:25 p.m. by Mayor Powell. Notice of meeting and agenda were posted on the City Hall notice board as required by law.

ROLL CALL

PRESENT:                      Randy Bass, Ward One  
   Glenn Devine, Ward Three  
   Robert Shanklin, Ward Five  
   Barbara Moeller, Ward Six  
   Stanley Haywood, Ward Seven  
   Michael Baxter, Ward Eight

ABSENT:    James Hanna, Ward Two  
                 Amy Ewing-Holmstrom, Ward Four

AUDIENCE PARTICIPATION:

Raymond McAllister expressed appreciation for all the City has done and shown to him.

John Veal, 2012 NE 31<sup>st</sup> Street, said a meeting was held on the NE Flowermound Road Project last week, but notice was not given to residents who may be affected by the project. He suggested the notice procedures be expanded in the future to include the residents because his property may be directly affected by this project.

CONSENT AGENDA : Separate consideration was requested for Items 1, 15, and 17.

MOVED by Shanklin, SECOND by Baxter, to approve the Consent Agenda items as recommended with the exception of Items 1, 15, and 17. AYE: Haywood, Baxter, Bass, Devine, Shanklin, Moeller. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for denial: Fred Baughman, Joe Burton, Fred and Lou Cheek, Kimiko Menden, Chad and Tisha Rother, and Southwestern Bell Telephone. Exhibits: Legal Opinions/Recommendations.

Chad Rother, 811 SW Chaucer Drive, requested approval of his claim regarding the flooding of his house. He said he has lived here for three years, his house has sustained water damage twice and he felt it was because the City drainage ditch behind his house was not angled properly. Rother presented pictures and stated there is a 40 foot drop in elevation from 82nd Street to the ditch behind his house as shown on a map from the Planning Division. He said the City Engineer stated the ditch was supposed to handle the ten-year storm but his house was flooded twice in three years.

Rother said the Tort Claim Opinion notes that the storage shed encroaches on the drainage ditch but it is one foot above it and that would not cause a drainage problem. He said the ditch is not big enough and the water is backing up. Rother related his conversations with Lynn Struthers, Public Works Department, regarding layout of the drainage in the area, and about other residents whose homes have flooded. He said he installed a concrete barrier at the bottom of the fence and one along the top of the drainage ditch to try to divert the water away from the house.

Moeller suggested the shed be removed off of the drainage ditch which is a City right of way. Rother said he would be willing to do that but wanted a solution to the water flooding his house.

Moeller offered a motion to approve the claim with the condition that Rother will remove the shed and City staff

will take care of the drainage, so both sides do what they need to do to prevent water from getting into homes, and to adopt the resolution.

Devine agreed the City should help Rother but suggested the engineers see what can be done before acting on the claim. Moeller said that was part of her motion. Devine said he would hate to see everyone file a claim who has had water come into their home. Mayor Powell questioned whether the City owned an adequate amount of land to divert the water. Shanklin said his home was flooded frequently after the alley behind Fort Sill Boulevard was built up so he had to put in a swell to handle the drainage. Shanklin said Rother stated earlier that the previous owner of this home also had flooding and that he was aware of it but purchased the house anyway.

Jerry Ihler, Public Works Director, said the original development plat shows the lot is to drain from the back, around the side to the front, which is a typical drainage pattern for housing developments. He said after subdivisions are complete and citizens purchase these properties, they make landscape improvements to the lots and sometimes they do not allow for the water to flow as was originally planned. Ihler said this situation is the first notification in this particular area.

MOVED by Shanklin, SECOND by Haywood, to table the Rother claim until an on site inspection can be made by Council, and claim amount can be verified, at which time it will be brought back before Council. AYE: Bass, Devine, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Rother said he did not mind if the Council members can out to look at the back yard.

Shanklin said the Council had been approving claims involving damage to sprinkler systems done by City crews and recommended approval of claims in this item like that.

MOVED by Shanklin, SECOND by Bass, to pay claims of Baughman, Cheek, and Menden, and to deny the Burton and SW Bell claims. AYE: Bass, Devine, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Moeller suggested it might be helpful if owners could be asked to mark sprinkler systems if crews are planning to work in their yards.

2. Consider the following damage claims recommended for approval and consider passage of any resolution authorizing the City Attorney to file a friendly suit for the claim which is over \$400.00: Edward and Connie Schmidt. Exhibits: Legal Opinion/Recommendation.

(Title) Resolution No. 02-158

A resolution authorizing and directing the City Attorney to assist Edward and Connie Schmidt in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the amount of One Thousand Six Hundred Seventy Seven Dollars and No/100 (\$1,677.00).

3. Consider approving the appointment of Susan Zwaan as an Alternate Municipal Judge, and authorize the Mayor and City Clerk to execute the agreement. Exhibits: Agreement. Action: Approve the appointment of Susan Zwaan as an Alternate Municipal Judge, and authorize the Mayor and City Clerk to execute the agreement.

4. Consider extending the 120-day termination notice to CKT Water Association for an additional 90 days. Exhibits: Letter. Action: Extend the 120-day termination notice to CKT Water Association for an additional 90 days.

5. Consider rescinding the 120-day termination notice to Cotton County Rural Water District No. 2 and allow the District to perform under the agreement. Exhibits: Letter; Minutes. Action: Rescind the 120-day termination notice to Cotton County Rural Water District No. 2.

6. Consider approving a contract with Carter & Burgess, Inc. for professional design services for the Storm Water Mitigation Master Plan Project #2002-8. Exhibits: None. Action: Approve a contract with Carter & Burgess, Inc. for professional design services for the Storm Water Mitigation Master Plan Project #2002-8 for a base fee amount of \$321,233 and a total fee amount of \$403,738, contingent upon FEMA approval.

7. Consider authorizing the Mayor to send a letter to the McMahon Foundation requesting funding of street improvements for Elmer Thomas Park and authorizing staff to prepare plans for the project. Exhibits: Map. Action: Approval.

8. Consider approving plans and specifications for the NW 23rd Street Improvement Project #2001-15 and authorizing staff to advertise for bids. Exhibits: None. Action: Approval.

9. Consider approving Change Order No. 1 for the McMahon Auditorium East Side Drainage Construction Project #2002-14 with Kent Waller Construction. Exhibits: None. Action: Approval; increases contract amount by

\$1,718.42 and adds seven days to contract time.

10. Consider endorsing the Boulevard of Lights request to Fort Sill for support. Exh: Letter. Action: Endorse the Boulevard of Lights request to Fort Sill for support and authorize the Mayor to forward with appropriate letter.

11. Consider authorizing an agreement between the City of Lawton and Marie Detty Youth and Family Services Center for the sponsorship of youth recreation programs and accept funding for the recreational programs. Exhibits: None. Action: Approve agreement and accept \$11,000 in funding for youth recreational programs.

12. Consider approving an agreement between the Center for Creative Living Corporation and the City of Lawton for services to senior citizens. Exhibits: Letter. Action: Approve agreement in the amount of \$13,214.

13. Consider approving the following contract extensions: A) Traffic Signal Parts and Equipment with Pelco Products, Inc. and Traffic Parts, Inc. Exhibits: None. Action: Approval.

14. Consider awarding contract for Water Clarification Chemicals. Exhibits: Recommendation; Abstract. Action: Award to Gulbrandssen Technologies, Inc. for Item 1 and to Sweetwater Technologies for Item 2.

15. Consider awarding contract for Mowing and Litter Control II. Exhibits: Recommendation; Abstract. Action: Award to Service One Janitorial of Lawton for Section II, Area A, and Yardworks for Section I, Area C.

Moeller said one vendor received the bid packet on August 14 and the bid was due on August 15, and it involved 28 properties so they were not given adequate time to view the properties to submit a proper bid. She requested more notification be given to bidders in the future.

MOVED by Moeller, SECOND by Baxter, to approve the contracts for Mowing and Litter Control to Service One Janitorial and Yardworks. AYE: Devine, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

16. Consider awarding contract for Rainfall, Streamflow Monitoring System. Exhibits: Recommendation; Bid Abstract. Action: Award to HydroLynx Systems, Inc.

17. Consider awarding contract for Water Pipe and Fittings. Exhibits: Recommendation; Abstract.

Baxter suggested that bid item two be separated and awarded to the low vendor as it is a difference in price of \$3,000. Ihler stated this is acceptable and that he would make contact with the low vendor to determine availability of the product.

MOVED by Baxter, SECOND by Shanklin, approve awarding the contract to Water Products Inc., with the exception of Item Number Two, which will be awarded to Oklahoma Contractor's Supply, providing they are willing to sell one item. AYE: Devine, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

18. Consider approval of payroll for the period of August 19 through September 1, 2002.

19. Consider approval of Minutes of Lawton City Council Meetings of August 12 and 13, 2002.

#### UNFINISHED BUSINESS ITEMS:

20. Consider the following damage claim recommended for denial, tabled from the July 23, 2003, meeting: Gaila Ferrell. Exhibits: Legal Opinion/Recommendation.

Vincent stated Ms. Ferrell had not provided complete cost estimates as required. Tim Wilson, Assistant City Attorney, discussed home inspection reports provided to the claimant when she purchased the property in October 2001, indicating plumbing and structural concerns as to the crawl space vents being inadequate to properly vent underneath to keep the under part of the house dry. The report shows inadequate ventilation for ground water to drain under the house, and the vents are low which allows water to penetrate. Gas, water, and waste lines are extremely corroded and rusted. Wilson said the owner was aware of the situation regarding this property at the time of purchase. He further reviewed the City's efforts to insure there were no water leaks, as stated in the opinion memorandum.

Wilson said the City's position is that the majority of damage was caused by rain water, ground water, as this property is at the bottom of the hill and ground water can easily penetrate this property. He said the claim was originally tabled due to lack of estimates and damage amounts, and no documents have been. The claim is for \$45,000, which was the purchase price of the home. He recommended denial of the claim, noting the Oklahoma Tort Claims Act limits the amount to \$25,000, and proximate cause, to have negligence one has to show the action was the proximate cause of damage, and claimant has not met this burden of proof of proximate cause. Owner/Claimant was not present to speak.

MOVED by Shanklin, SECOND by Baxter, to deny claim as recommended. AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Devine. NAY: None. MOTION CARRIED.

21. Consider approving the First Amendment to the Cooperative Agreement with the Comanche Tribe of Oklahoma and accepting the 12-inch waterline that serves the Comanche Nation Casino, an easement, and maintenance bond. Exhibits: Documents on file in City Clerk's Office

MOVED by Shanklin, SECOND by Baxter, to approve the First Amendment and to accept the easement and dedication of water line. AYE: Devine, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

22. Receive a status report on 707 W Gore Boulevard to determine what actions, if any are needed for the structure to be habitable. Exhibits: None.

Vincent said the owner has been given notice that he has 30 days to receive a final certificate of occupancy, otherwise city utilities will be disconnected, and PSO and Arkla will be asked to do the same because of failure to comply with the building code requirements. Code does not specify a time limit on obtaining final inspections. Shanklin asked for information regarding the building on the alley. Vincent said this building could be an accessory structure to that structure, if used for storage at this particular site, and plumbing is allowable in an accessory building if used by that location only.

#### BUSINESS ITEMS:

23. Hold a public hearing and consider an ordinance changing the zoning from C-3 (Planned Community Shopping Center District) to C-5 (General Commercial District) zoning classification located at 1202 NW 40th Street. Exhibits: Ordinance No. 02-35, Map; Site Plan; Application; CPC Minutes.

Bob Bigham, Assistant Planning Director, presented an area map and stated the CPC held public hearings on July 11 and July 25 regarding zoning of this 10.15 acre tract located one block south of Cache Road on the west side of NW 40<sup>th</sup> Street. The applicant is The Home Depot U.S.A., Inc., the property owners are The Fleming Companies, Inc., and Gershman Properties, LLC. Zoning of the surrounding area is C-3 to the north; C-3, R-4, and R-1 to the south; C-4 and C-3 to the east, and C-5 to the west. Land use of surrounding area is commercial (Denny's, Arby's, Phillips Chiropractic) to the north, vacant and single-family to the south, commercial (Baymont Inn, K-Mart) to the east, and commercial (parking lot for Golden Corral) and vacant to the west. The 2025 Land Use Plan designates this area as Commercial. The proposed use of the requested area is a Home Depot store, which requires C-5 zoning. During the CPC public hearings, one person spoke in favor of the request and eight persons spoke against. Several people speaking against the request were concerned that NW 41<sup>st</sup> Street would be opened to traffic from the existing residential neighborhood to the Home Depot site. The site plan and building plans do not indicate a connection to NW 41<sup>st</sup> Street nor has a request been made in that respect. Residents requested a wall be constructed separating the Home Depot site from the neighborhood. The CPC, by an 8 - 0 vote, recommended approval of the rezoning. CPC also recommended that Council suggest to Home Depot that a continuous wall be constructed along the south boundary of the property and that Council not open NW 40<sup>th</sup> or NW 41<sup>st</sup> Street south of the Home Depot site, if such a request is ever made. Notice of public hearing was mailed on August 6, 2002, to 20 property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on August 11, 2002. The City Code requires screening of commercial from residential, but in this case, Home Depot is adjacent to commercial so screening is not required by the Code.

Devine expressed opposition to any future consideration of opening NW 40<sup>th</sup> or NW 41<sup>st</sup> Street to traffic all the way to Cache Road, and said residents had indicated that desire to him as well. He said having Home Depot put up a fence is highly recommended.

#### PUBLIC HEARING OPENED.

Larry Koehler, Home Depot representative, presented a site plan showing the dock placement, loading zone, and a proposed fence with landscaping to provide a sight and noise barrier. Another alternative was to have a block fence the entire length of the property, and Home Depot is willing to do one or the other, but not both. He said the 4' wall/landscape combination would be most practical to the appearance of the surrounding community. Koehler pointed out that Home Depot is providing storm drainage for a 20 acre area that is not necessarily their responsibility but their engineers had redesigned the drainage and agreed to install a 60" pipe to accommodate the 20 acres, much of which is hard surfaced and a drainage swell to take care of any other drainage that will not be displaced in the 60" pipe. 40<sup>th</sup> is draining to the north and from Cache to the south. A junction box will be placed to take care of drainage in this area. These are done in an effort for Home Depot to be a good neighbor, which is always the goal.

Baker asked if the first plan shows trees on the south end of the property, north end of Home Depot fence. Koehler said yes. Baxter commended Home Depot for taking an extra step to assist in the current drainage situation and sought assurance that NW 40<sup>th</sup> Street was not being considered for opening.

Chuck Waugh, 831 NW 41<sup>st</sup> Street, said he lives in a good, quiet neighborhood and was very concerned about the loss in property value once this business is established, and requested that Home Depot agree to a full fence with landscaping. He said those costs should not be an issue since this is a multi-million dollar business. Waugh said the lighting and noise will be atrocious, and the lesser fence will enhance a trash problem allowing trash to blow around and into their yard, whereas a full fence would protect the clutter from public view. He said there would be noise while trying to relax on his patio and entertain guests, and that it would be embarrassing. Waugh said it was his understanding that once the property is rezoned, there is no obligation for the business to follow through with their commitments, no gate keeper to force them to hold to their promises. He said the majority of neighbors do not want this in their backyards.

In response to a question from Moeller, Waugh said he did not prefer either fence proposal and requested that corners not be cut and that a full wall with trees and landscaping be put in as they possibly can. Devine asked if such a stipulation could be included in the rezoning. Vincent said no, and since there is intervening commercial property, there is not a screening requirement in the Code. Koehler said his firm would keep their word on such matters, and that the store managers are responsible to police up any trash or debris on a regular basis.

Lori Waugh, 831 NW 41<sup>st</sup> Street, said she had visited with people in Oklahoma City who live next to Home Depot stores and they did not like them, the major complaint was noise, Home Depot was not a good neighbor, and trash blows into adjacent yards. Mrs. Waugh asked the Council to consider what kind of neighborhoods they wanted in Lawton, if they wanted to protect them, and if these megamillion dollar businesses could not seek other locations that are currently available and zoned for such use.

Koehler asked Bigham if this neighborhood is zoned residential. Bigham stated some of the houses are in residential zones and some are not. Haywood asked how many persons this business would employ. Koehler said approximately 150 employees would be hired from the Lawton area, and the store manager would generally be promoted from another location.

Jess Hankins spoke in opposition to the rezoning stating the property previously belonged to his family and he had purchased 1.75 acre for his retirement home, and hoped to be able to pass it on to his son. Hankins said he tried to get the property rezoned before and was denied.

Donna Watson, 825 NW 41<sup>st</sup> Street, said they have lived at this location for 37 years and have watched this neighborhood grow into the best neighborhood in town, investing many dollars in making this a respectable neighborhood. She said her question is: what are the homeowners' rewards for making good neighborhoods? Watson said encroachment of such a huge business this close to a neighborhood is not acceptable and requested that rezoning be for a smaller, lower scale business. She said Lawton offers many other areas for a business of this type. She said the pecan orchard, nature, and wildlife are a very integral part of their neighborhood. Watson said she was concerned about being flooded. She asked Council to consider whether they would want this encroaching into the neighborhoods they live in.

Pat Hankins, 1008 NW 41<sup>st</sup> Street, said they do not have a fence around their 1.75 acres and have an orchard and nice garden. All of the neighbors are in agreement, this area is very nice and quiet but this will all be lost upon the arrival of Home Depot. She said when the grocery store was there, they continually picked up trash to keep the neighborhood clean.

Josh Hankins, 1008 NW 41<sup>st</sup> Street, said his concern was destroying the wildlife area in the neighborhood, which is quiet and a wonderful place to live, but once Home Depot comes in, their quiet neighborhood would become a miserable place to live.

Larry LaRoche, 4514 NE Highlander Circle, said his daughter lives in this area and wondered if a study had been done on whether the creek will handle the runoff from the acres of blacktop and concrete; or if a study had been done to see if Cache Road could handle the increased traffic flow. He said he looked forward to Home Depot coming to Lawton and there are many areas available to accommodate such a business, without moving into this neighborhood. LaRoche said the previous business was a grocery store, which was much different from this, and that noise will be terrible.

Courtnetta Jolls, 7<sup>th</sup> and Gore, said she liked Lawton and moved here only a month ago. She said she was a Home Depot junky and asked that the store go the extra mile to appease the residents since children are being raised in these neighborhoods.

**PUBLIC HEARING CLOSED.**

MOVED by Baxter, SECOND by Shanklin, to approve Ordinance No. 02-35 changing the zoning to C-5 to include in the motion the suggestion that Home Depot agree to construct an 8' fence full property, 400 to 500 feet, whatever the footage.

There was discussion from the audience as to which option to request, full fencing or partial fencing with landscaping. Devine asked if the Home Depot representative would give his word to putting in the fence. Koehler

said he had been authorized to offer the shorter fence and landscaping, and would present the request for the taller, full length fencing, less the landscape, to his organization again.

(Title read aloud) Ordinance No. 02-35

An ordinance changing the zoning classification from the existing classification of C-3 (Planned Community Shopping Center District) to C-5 (General Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in Section One (1) hereof; authorizing changes to be made upon the Official Zoning Map in accordance with this ordinance.

VOTE ON MOTION: AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Devine. NAY: None. MOTION CARRIED.

24. Hold a public hearing and consider an ordinance changing the zoning from R-1 (Single-Family Dwelling District) to P-O (Professional and Office District) zoning classification located at 1810 and 1812 NW Sheridan Road. Exhibits: Ordinance No. 02-36; Map; Site Plan; Application; CPC Minutes.

Bigham presented an area map and reviewed background. He said this row of lots has been designated for a professional office district. The CPC held a public hearing on July 25, no one spoke for or against this request, and the CPC recommended approval by a 8-0 vote. Notice of public hearing was mailed on August 6, 2002, to 36 property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on August 11, 2002.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Bass, SECOND by Baxter, to approve Ordinance 02-36.

(Title read aloud) Ordinance No. 02-36

An ordinance changing the zoning classification from the existing classification of R-1 (Single-Family Dwelling District) to P-O (Professional and Office District) zoning classification on the tract of land which is hereinafter more particularly described in Section One (1) hereof; authorizing changes to be made upon the Official Zoning Map in accordance with this ordinance.

VOTE ON MOTION: AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Devine. NAY: None. MOTION CARRIED.

25. Consider an appeal on the denial of a building permit and special flood hazard development permit for the expansion of Meadow Wood Animal Hospital located at 4105 West Gore Boulevard submitted by J. Scott Briggs. Exhibits: Letter of Denial; FIRM Map; Criteria for Granting Appeal; Letter of Appeal; Statement by Al Jung, Landmark Engineering; Order.

Bigham presented an area map and reviewed background on the appeal of a denial of a special flood hazard development permit submitted by Dr. Briggs. The building permit was to expand the Meadow Wood Animal Hospital at 4105 W Gore Boulevard by adding a second floor and two stairways. The proposed construction is located within the boundaries of the floodway of Meadow Creek identified on the FEMA maps, therefore under our code restrictions, a building permit could not be issued. Section 19A-242B.1 states encroachments are prohibited, including fill, new construction, and substantial improvements in the designated floodway. The property is located within the regulatory floodway according to FEMA's Flood Insurance Rate Maps, which are adopted by reference in Section 19A-205 of the Lawton City Code.

Bigham said Exhibit 2 is the flood panel indicating the location of 4105 W Gore Boulevard. The floodway is an extremely hazardous area due to the velocity of floodways which carry debris, potential projectiles, and erosion potential. Lawton City Code, Section 19A-231, establishes the right to appeal when it is alleged there was an error in any requirement, interpretation, decision, or determination made by the code official, for the preservation of a historical structure, or when the regulations create a hardship for the applicant. City Code allows for a strict provision of the Appeal Board, Council, in granting a variance. Exhibits signify the steps taken in applying for and granting an appeal, and Item 5 is the criteria for granting the appeal.

Bigham said an engineering review was received on this from Landmark Engineering and it was reviewed by Larry Wolcott. On page 106, Variance and Order, these items have to be voted on individually: A.) A statement from Al Jung, registered professional engineer, that there will be no adverse impact on the base flood elevation with the proposed construction, which indicates the base flood will not be increased at this location. B.) The applicant submitted an elevation certificate prepared by Landmark Engineering dated May 8, 2002, which indicates the lowest floor elevation is 1111.05 feet with the base flood elevation at 1113.0 feet. The lowest floor of the building is 1.95 feet below the base flood or projected flood elevation. C.) The applicant has been given written notice, by certified mail, that granting of the variance for construction below the base flood elevation would potentially cause the cost of flood insurance to the applicant to increase commensurate with the increased risk. Staff has provided a certified letter to Mr. Briggs, putting him on notice that this may cause his insurance to substantially increase.

Shanklin asked if Mr. Briggs is expanding the perimeter. Bigham stated no, however, this is considered to be new construction according to FEMA regulations and National Flood Insurance guidelines according to the 1 percent chance of the 100 year flood.

Bigham said the next item is D.) The structure in question would not qualify as a historical structure. The applicant and his consulting engineer, Al Jung, are present. Bigham suggested with the four appropriate answers on A - D, a motion could be made on those to satisfy the appeal. Item E, this is listed in the FEMA criteria, is the one to be voted on separately, and Item F allows Council to add any conditions that may be appropriate to make this a better situation for new construction. Acting as the Appeal Board, Council must answer affirmatively to all questions; denial of one question will be cause for denial of the complete application.

Bass asked if the City would have to purchase this property if there was flooding, such as was done recently with a number of homes. Bigham said the Flood Insurance Program is voluntary and the City must follow the guidelines; the program is a definite advantage to the citizens because flood insurance would not be available if we did not participate. Bigham said he did not feel the City would be required to purchase this property unless a project was being done in the area.

Bigham said this criteria is pertinent to fulfill the requirements of the Flood Insurance Program and records must indicate that all procedures have been completed properly. Staff recommends approval of conditions A - D, and for Council to take a separate action on E and F.

MOVED by Shanklin, SECOND by Haywood, to accept and approve Items A - D. AYE: Moeller, Haywood, Baxter, Bass, Devine, Shanklin. NAY: None. MOTION CARRIED.

MOVED by Moeller, SECOND by Baxter, to accept and approve Item E stating the good and sufficient cause being the foot print is not increasing, the building is only going higher. AYE: Haywood, Baxter, Bass, Devine, Shanklin, Moeller. NAY: None. MOTION CARRIED.

MOVED by Moeller, SECOND by Baxter, to accept and approve Item F without added changes. AYE: Baxter, Bass, Devine, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED.

26. Consider approval of a Revocable Permit for the erection of a four feet (4') fence in the City's right-of-way adjacent to 815 NW Euclid Avenue. Exhibits: Application; Revocable Permit.

Bigham said a complaint was received concerning the fencing in of a sidewalk adjacent to 815 NW Euclid. The company did not obtain a building permit and the fence post had already been set in concrete. Under the provisions of the Code, in North Addition, where the City has 100 foot right of ways, there is a provision allowing a fence to be placed 11 1/2 feet back of curb, but does not allow fencing of sidewalks, fire hydrants or any other public utility so Shanklin requested the revocable permit to get the fence in a proper location and obtain a proper sight triangle. Staff has advertised for an amendment to Chapter 18 dealing with sight triangles in this type of situation, and this revocable permit has been formatted under the terms of that proposed ordinance.

Shanklin asked if the distance of 45 feet would be the same distance in all other areas of Lawton. Bigham stated no, because the ordinance is not being changed to have the standard 50 foot residential right of way. This ordinance, as it applies to the 100 foot and 80 foot right of ways, is the same area assuming that in a 50 foot right of way the City has 11 1/2 foot behind the curb. This is not the same requirement, but it is the same area that is being left open, only being measured a different way.

MOVED by Shanklin, SECOND by Bass, to approve a Revocable Permit for the erection of a four foot fence. AYE: Shanklin, Moeller, Haywood, Bass, Devine. NAY: None. OUT: Baxter. MOTION CARRIED.

27. Consider an ordinance amending Sections 2-424 and 2-424.1, Article 4, Chapter 16, Lawton City Code, 1995, relating to amending the hours of restriction of loud noises and the distance in which it may be audible; providing for severability and declaring an emergency. Exhibits: Ordinance No. 02-37.

Shanklin stated there is a need to be able to control noise, including reverberations, throughout Lawton, and not limited to car wash locations. Bass asked if the police will be able to issue citations on private property. Vincent said yes because the wording includes "or private property in which the public is invited" so this would allow the City authority on private parking lots. Moeller questioned the enforcement as to vehicles being driven in disobedience of this ordinance, and how this situation would be enforced. Harold Thorne, Acting Police Chief, stated this past weekend an unmarked vehicle was used and some citations were issued on parked vehicles for loud music complaints; to enforce it for vehicles being driven, an officer has to witness the violation before a citation can be issued.

Bass asked if the decibel meter has to be used during the citation process and are the property owners liable, or can they also be cited with tickets as well as the person committing the violation. Vincent stated that the hearing

of the police officer would be sufficient evidence in the way this ordinance is written, and he reviewed appropriate sections. Vincent said if a property owner allows loud noise on his property to continue, and it becomes a public nuisance, he could be cited.

Moeller asked if use of the unmarked vehicle during daylight hours was successful. Thorne said it was and due to vehicle lighting requirements, unmarked vehicles cannot make traffic stops so the officer in the unmarked car made radio contact with an officer in a marked police vehicle, who then made the stop and gave the citation.

Shanklin asked if a store such as Home Depot could be cited for a public nuisance or for littering if they allow trash to blow off of their property.

Moeller asked once these people are cited, would the Judge be allowed to assess the maximum fine and not let them off. Vincent said the code provides a fine not to exceed \$500, and Council could publish an ordinance amending the penalty section of Chapter 1, to say for example, a fine of not less than \$200, nor more than \$500.

Baxter said he discussed this issue with Judge Corrales and the State Code allows for a \$100 fine and \$25 court cost, and the City cannot overrule the State.

MOVED by Shanklin, SECOND by Moeller, to adopt Ordinance No. 02-37.

(Title read aloud) Ordinance No. 02-37

An ordinance pertaining to noise, amending Section 2-424 and 4-424.1, Article 4, Chapter 16, Lawton City Code, 1995, amending the hours of restriction of loud noises and the distance in which it may be audible, providing for severability and declaring an emergency.

VOTE ON MOTION: AYE: Moeller, Haywood, Baxter, Bass, Shanklin, Devine. NAY: None. MOTION CARRIED.

28. Consider a resolution amending planning and zoning fees in Appendix A, Schedule of Fees and Charges, Lawton City Code, 1995. Exhibits: Resolution No. 02-159; Table of Fees.

Bigham said the fee increase is recommended due to increased costs of publications and postage directly related to items listed in the fee schedule.

MOVED by Shanklin, SECOND by Baxter, to increase fees as recommended by Staff. AYE: Haywood, Baxter, Bass, Devine, Shanklin, Moeller. NAY: None. MOTION CARRIED.

(Title) Resolution No. 02-159

A resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 1995, as amended, amending the fees for Uses Permitted on Review, appeals to User Permitted on Review decisions of the Planning Commission, rezonings, appeals to the Board of Adjustment, and closing of public ways and easements; and establishing fees for amendments to the Land Use Plan.

29. Consider discussing and providing guidance concerning the pickup of yard waste and brushwood; and discuss and provide guidance on commercial vehicles being charged a fee for grass clippings and wood chips being taken to the Landfill. Exhibits: Pros and Cons for grass collection alternatives.

Jerry Ihler, Director of Public Works, during the FY02-03 budget, Council requested staff to review and provide options for a more equitable means of charging for grass pickup. It was felt that some citizens are putting out an excessive amount of bags after completion of mowing and that they should pay extra for that service. The second issue was charging a fee to lawn service personnel who take grass clippings to the landfill. Currently the City Code states that any commercial vehicle bringing grass clippings or woodchips to the landfill will not be assessed a fee as long as the grass clippings or wood chips are not contained in plastic bags or other similar container or are not comingled with other waste. It is staff's position that lawn service personnel are providing a service to city staff because if they didn't bring the clippings to the landfill, then Solid Waste would have to pick up those bags.

Ihler said staff was seeking guidance regarding the number of bags, and three alternatives are provided: 1) Do nothing at all and continue to provide the service as it is provided now; 2) Allow the residents to put out three bags of grass and three bundles of tree limbs, and then any number of bags or bundles greater than three on one pickup day would be assessed a fee, which could be determined at a later date; or 3) Charge for all bags of grass and all bundles that are put out, regardless of the number.

Ihler said staff surveyed Wyatt Acres, Terrace Hills, a central area, Pioneer Park, McArthur Park, and Carriage Hills during the last two weeks of June and the first two weeks of July, which is part of the prime growing season. The survey covered about 22% of the houses in Lawton and showed that only 27% of those surveyed were putting out bags of grass clippings. It was originally thought that a greater percentage would have put out some bags but residents could be mulching, or have lawn services that are taking the bags to the landfill. The average number of bags per home was 2.7, giving an average number of three for the number of bags allowed for each pickup, which would be six bags per week. Allowing three bags per pickup would alleviate the need for record keeping and



monitoring if more bags were put out on the Monday pickup compared to what was picked up on Thursday so that is recommended as an alternative. It is estimated that an average household would mow once per week.

Ihler said in a case where one home had 17 bags for one pickup, they cannot determine if someone mowed more lawns in that particular area and placed all the bags from three or four homes on one lot. Mayor Powell asked if there is a way to monitor areas where a substantial amount of bags are placed at one location. Ihler said placement of a substantial number of bags in one location essentially does our crews a favor because it is easier to pickup at one site than at four or five locations.

Baxter said some residents may be penalized with the limit of three bags per pickup and some yards will have more, some will have less. Moeller asked if there are other possibilities of having other entities pick up the grass clippings for use on farms, etc. Mayor Powell said caution was needed due to fertilizer use and other problems which can injure animals. Ihler said he was concerned that once a limit is placed on the number of bags per pickup, that citizens will place the allowed amount and hold over the remainder of bags until the next pickup. Shanklin expressed a concern of the landfill being consumed by grass clippings and said lawn services should be allowed to take clippings to the landfill and place them in a restricted area for grass clippings only, and we should not penalize those who do not put out any against those who put out 20 or 30. Shanklin requested staff to bring back an ordinance directing lawn care service businesses to take all grass clippings to landfill and not leave them on site for City crews to pick up.

MOVED by Baxter, SECOND by Moeller, to accept alternative one, do nothing at all and continue to provide the service as provided now. AYE: Baxter, Bass, Devine, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED

30. Consider approval of a State-Local Disaster Assistance Agreement with the Oklahoma Department of Civil Emergency Management for a \$75,000 grant for the NOAA Weather Radio Project and authorize the Mayor to execute the agreement. Exhibits: Letter; Agreement.

MOVED by Moeller, SECOND by Haywood, to authorize the Mayor to execute agreement. AYE: Bass, Devine, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

31. Discuss Administrative Policy 3-15, Community Services Program and provide guidance to the Municipal Judge. Exhibits: Administrative Policy 3-15.

Shanklin expressed a desire to implement the community service program in an effort to receive funds for citations not being fully paid. He said with jail overcrowding, inmates are not serving their complete sentence. This community service program, if implemented appropriately, would assist the city staff in needed areas while having the inmate serve the full sentence; the City is losing a substantial amount of money. He asked that the City Manager direct staff to utilize this program. Research will be done to make a determination on supervision of this program. Offenders cannot agree to community service if it is not offered to them. Community service will consist of mowing right of ways, collecting litter on city properties, etc. but will not include operating power tools and city equipment. Baker requested the Council indicate its desire for the Judge to use this tool if at all possible and if it is appropriate, as the Judge works for the Council, not the City Manager.

MOVED by Shanklin, SECOND by Baxter, to ask the City Manager to implement a community service program. AYE: Devine, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

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#### REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Haywood expressed condolences at the passing of Bishop Young at the age of 96. He was a high ranking national official in the church and many dignitaries attended the funeral.

Baxter requested that a traffic signal at Crosby Park and Quanah Parker Trailway be considered due to the increase in the upcoming Wal-Mart traffic, scheduled to open the third week of March 2003. As to the dirt work being done for the new Wal-Mart, their dam broke through in the recent rain storm, dumping a large amount of mud down Crosby Park Boulevard, and citizens have asked that it be cleaned up quickly by the construction crews, as well as repairing their dam.

Baxter said a memo was sent warning employees not to steal money from the City. He said warnings should not be needed, and action should be immediately taken in such a circumstance.

Shanklin said approximately 200 mowing liens will be added to current water bills by the end of the week. He said revenue for July seems to be down, as well as collections for the last two months and asked if there was cause for alarm. Baker said he was beginning to get alarmed by the numbers; sale of water is down 10 mgd day less than this time last year, which translates into quite a bit of revenue. Sales tax was down 6% for the month. The year end carry over number is not available yet, but should be received by the end of the week. Baker said a lot of assumptions were made going into this budget year, and if these things don't materialize, it certainly has an

adverse impact on the budget.

Shanklin said the Solid Waste foremen will be placing tags on houses where alleys are overgrown or full of trash. He said violations can carry a fine of up to \$120, and it is likely that citizens will take care of the problems after receiving that notice.

Shanklin said Acting Police Chief Thorne stated it was a good idea to have two officers to vehicle, but there is a shortage of manpower so there may be a need to pay overtime to accomplish this. He asked Council to authorize Mr. Baker to recruit ten additional police officers, and said he hoped that preference would be given to those applicants who live in Lawton, Oklahoma, and we should be able to control who we hire. Shanklin said annexation has gotten completely out of hand; county residents expect more for less, want all the services, but do not want to be included in the area.

Moeller expressed thanks for the out pouring of support in the recent death of her husband, Gene. She expressed condolence at the passing of Betty Bochantin, founder of the Sister City Group with Gullisheim, Germany. Moeller said the program will continue and asked that it be supported.

Mayor Powell said the warden at Wackenhut called concerning a 115% increase in their water bill. He asked that the water committee look into these customers who suffered a dramatic increase and make a recommendation to Council. Mayor Powell said a citizen in the 2100 block of Lake called to commend DOC on their excellent work in that area. He said he had asked for three volunteers regarding annexation, and one has come forward. The group has notified us that they have their ten names, and two alternates. Devine volunteered to serve.

Bass stated there was no intent for water rates to increase that high. The committee only was proceeding in an effort to sell the water for what it costs to get it there, and that further research and study will be done. Bass said he attended a meeting at the LO Ranch on annexation, and thought people misunderstood what was going on so there was a need to meet with them.

Mitchell said a letter was distributed regarding abatement liens and OML has placed this on their legislative agenda and will provide assistance through this legislative session on getting something passed.

Baker said seven replacement police officers should be on board shortly, and knew Council was interested in adding ten officers. He said the backlog of mowing to abate nuisances was down to 30 from 170, and the attempt to hire another contractor was not successful due to the high bids received. Attempts will be made for this situation to not come up again next year.

Baker said the Waurika Master Conservancy Board approved the City's request for an extension until February 2003 to select an option on the second twenty-five year contract. The Board discussed a test of the Waurika relief station, the pumps and the line. Public Works will be getting back with Waurika to begin testing of this equipment. This is important at this time because the depth of Lake Ellsworth is down over 9 feet; if it continues to drop and rainfall is not received, we may be in a position to start actually getting Waurika water into Lake Ellsworth.

Mayor Powell said a report is needed on how many police officers have been assigned to other tasks, such as airport security, etc. Devine expressed a desire to bring those officers back in from the lake. Mayor Powell said on September 11, 2002, Fort Sill will be coming to Lawton for a celebration/remembrance event at the Museum. He requested that all employees come together for this ceremony.

#### BUSINESS ITEMS:

32. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of the land acquisition for the widening of Flower Mound Road between Gore Boulevard and SE Lee Boulevard, and if necessary, take appropriate action in open session. Exhibits: None.

33. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the possible settlement of a pending lawsuit of Christina Avera vs. City of Lawton, Case No. CJ-2002-560, District Court of Comanche County, and if necessary, take appropriate action in open session. Exhibits: None.

MOVED by Baxter. SECOND by Shanklin, to convene in executive session as shown on the agenda and as recommended by the legal staff after a five minute recess. AYE: Bass, Devine, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at 9:15 p.m. and reconvened in regular, open session at 9:20 p.m. with roll call reflecting all members present except Hanna and Ewing-Holmstrom.

Vincent reported on Item 32 (shown above) that executive session was held and Council received a report; no action was taken.

Vincent reported on Item 33 (shown above) that executive session was held and he recommended a motion to deny settlement of the Avera claim.

MOVED by Devine, SECOND by Shanklin, to deny the claim. AYE: Bass, Devine, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 9:25 p.m. upon motion, second and roll call vote.